

REMARKS

The Office Action dated May 9, 2003, has been reviewed in detail along with all references made of record. Reconsideration of the claims of the instant application is again respectfully requested in view of the following remarks.

Applicants would again like to extend their appreciation to the Examiner for the time and attention accorded this case. As will be set forth in detail herebelow, the issues raised by the Office in the outstanding Office Action, when reconsidered in light of the foregoing amendments and the following comments, should be resolved in Applicant's favor.

A minor error has been noted in the Amendment dated November 10, 2003, in that on page 2, line 11, Claim 2 should have been marked as "Currently Amended", and not "Original". A minor change has also now been made to Claim 5 to provide consistent terminology.

Claims 1-8, 18, 20 and 26 stand rejected under 35 U.S.C. 102(b) in view of Sessa. Claims 1-7, 12-14, 17-23 and 26 stand rejected under 35 U.S.C. 102(b) in view of Yung-Mao. Claims 1-6, 8, 12-18 and 26 stand rejected under 35 U.S.C. 102(b) in view of Sicurella. Claims 1-6, 12-18 and 23-28 stand rejected under 35 U.S.C. 102(b) in view of Kramer. The comments below addressing Claim 1 and each individual reference were provided in

the Amendment dated November 10, 2003, but are repeated here for the convenience of the Office.

Sole independent Claim 1 has been amended to essentially indicate that the claimed footwear insole comprises a base, a plurality of compressible protrusions protruding in a direction away from the base and for protruding away from a wearer's foot, and an arrangement for interconnecting said compressible protrusions, the interconnecting arrangement combining with the compressible protrusions to provide for strict compression of the compressible protrusions in response to a compressive force, whereby a column-buckling effect is avoided. It is respectfully submitted that such features are neither taught nor suggested by the applied art.

Sicurella appears to be directed to an insole in which protruding elements are to be disposed towards a wearer's foot. Tabs and fins (2) are either independent or interconnected. To the extent they are interconnected, however, it is clear that the structural integrity of the tabs and fins is so tenuous as to be prone to the very type of column-buckling explicitly avoided in accordance with embodiments of the present invention as defined by Claim 1. The intended self-massaging effect of the tabs and fins reinforces this notion, as the structure of the tabs and fins is clearly intended to provide structural deformations sufficiently pronounced as to promote a targeted, self-massaging effect. Further, the intended self-massaging effect of the tabs

and fins is also enhanced by the fact that they are intended to be disposed towards, not away from, a wearer's foot; to be disposed away from a wearer's foot would clearly compromise the intended effect of the Sicurella insole. Accordingly, it is respectfully submitted that Claim 1 fully distinguishes over Sicurella.

Yung-Mao, as best understood, is directed to a mid-sole that offers independent suspension with individual protruding elements. The protruding elements appear to be arranged so as to accommodate an observation window in the shoe. In stark contrast, Claim 1 is directed to an insole, which would appear to be widely recognized by those of ordinary skill in the art as being a distinctly different shoe component from, and entailing different standards and considerations as compared to, a "midsole". Further, the independent protruding elements of Yung-Mao do not in any way appear to be arranged or configured with the type of structural integrity that would readily avoid column-buckling as with an insole according to Claim 1. Accordingly, it is respectfully submitted that Claim 1 fully distinguishes over Yung-Mao.

Kramer, as best understood, also relates to a midsole. In this case, there are substantial deformation nubs that provide cushioning and air circulation and which are disposed towards, not away from, a wearer's foot. To fulfill the purposes of cushioning and air circulation, it is highly evident that the

nubs must be easily compressible and significantly deformable. In this vein, the independent nubs of Kramer do not in any way appear to be arranged or configured with the type of structural integrity that would readily avoid column-buckling as with an insole according to Claim 1. Further, the fact that they are intended to be disposed towards, and not away from, a wearer's foot stands in stark contrast with an insole according to Claim 1. And indeed, as stated above, Claim 1 is directed to an insole *per se*, which would appear to be widely recognized by those of ordinary skill in the art as being a distinctly different shoe component from, and entailing different standards and considerations as compared to, a "midsole". Accordingly, it is respectfully submitted that Claim 1 fully distinguishes over Kramer.

Finally, as best understood, Sessa is directed to a midsole or outer sole that provides compression via longitudinal spaced transverse ribs which run laterally. Spaces between the ribs apparently allow the ribs to deform sideways. This allowance of sideward deformation stands in stark contrast to an insole according to Claim 1, wherein column-buckling is avoided by way of an interconnection arrangement between protrusions, which provides a stabilizing effect. And again, Claim 1 is directed to an insole *per se*, which would appear to be widely recognized by those of ordinary skill in the art as being a distinctly different shoe component from, and entailing different

standards and considerations as compared to, a "midsole" or outer sole. Accordingly, it is respectfully submitted that Claim 1 fully distinguishes over Sessa.

By virtue of dependence from what is believed to be an allowable Claim 1, it is respectfully submitted that Claims 2-7 and 12-28 are also allowable. For instance, none of the applied references contemplate vectoring as recited in any of Claims 12-17. As stated above, Claim 8 has been cancelled herein without prejudice.

In view of the foregoing, it is respectfully submitted that the present 102(b) rejections have been overcome. Reconsideration and withdrawal thereof are hereby respectfully requested.

New Claim 29, dependent from Claim 1, further emphasizes the inherent relation of an insole to a midsole and a wearer's foot. By virtue of dependence from Claim 1, it is submitted that Claim 29 is allowable.

New independent Claim 30 combines the subject matter of Claims 1, 2 and 12. The comments presented above with respect to Claim 1 are equally relevant here. It is also respectfully submitted that the applied art does not teach or suggest the incorporated features of Claims 2 and 12 in addition, relating, respectively, to stages of compression and vectoring. It is thus submitted that Claim 30 is allowable as presented. Claims 31-36

relate to additional features involving vectoring and, by virtue of dependence from Claim 30, are believed to be allowable at this juncture.

Any rejections that were issued in the Office Action dated May 9, 2003, but which are not addressed hereinabove, have already been treated in the Amendment dated November 10, 2003.

**References Made of Record but not Applied:**

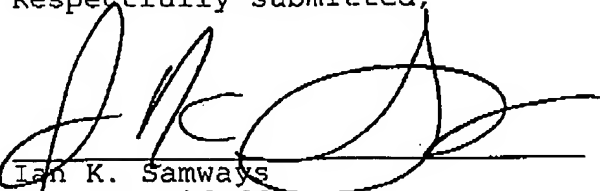
The references made of record but not applied against the claims have been reviewed. Applicants acknowledge that the Office has deemed such references not sufficiently relevant to have been relied upon in the outstanding Office Action. However, to the extent that the Office may apply such references against the claims in the future, Applicants are prepared to fully respond thereto.

\* \* \*

In summary, Applicants respectfully submit that the instant application, including Claims 1-7 and 12-36, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

Respectfully submitted,

Dated: December 10, 2003



Ian K. Samways  
Reg. No. 36,664

Reed Smith LLP  
P.O. Box 488  
Pittsburgh, PA 15230  
(412) 288-4160

Agent for Applicants

3. ☐ A verified statement to establish Small Entity status is enclosed.
4. ☐ Also enclosed:
5. ☐ No fee for extra claims is required.
6. ☒ The fee for extra claims has been calculated as shown below:

	Claims Remaining After Amendment (Col. 1)	Highest No. Prev. paid for (Col. 2)	Extra Present (Col. 3)	SMALL ENTITY				OTHER THAN A SMALL ENTITY		
				RATE	FEE			RATE	FEE	
Total Claims	36 - 28**	= 8*	X	\$ 9	= \$72	OR	X	\$ 18	= \$	
Ind. Claims	2 - 3***	= 0*	X	\$ 40	= \$0	OR	X	\$ 80	= \$	
<input type="checkbox"/> Multiple Dependent Claim Presented			+	\$135	= \$	OR	+	\$270	= \$	
				TOTAL				TOTAL		
				= \$72		OR		= \$		

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

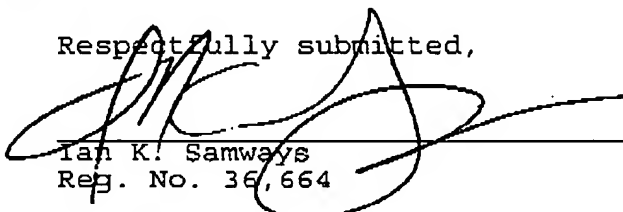
\*\* If the "Highest No. Prev. paid for" in this space is less than 20, write "20" in this space.

\*\*\* If the "Highest No. Prev. paid for" in this space is less than 3, write "3" in this space.

7. ☐ Applicant encloses herewith a check for \${Amount} to cover the extra claims fee.
8. ☒ The Director is authorized to charge the \${Amount} filing fee to Deposit Account No. 18-0582.
9. ☒ The Director is hereby authorized to charge payment of any additional filing fees associated with this communication or credit any overpayment to Deposit Account No. 18-0582. A duplicate copy of this communication is attached.

Respectfully submitted,

Dated: December 10, 2003

  
Ian K. Samways  
Reg. No. 36,664

REED SMITH LLP  
P.O. Box 488  
Pittsburgh, PA 15230  
(412) 288-4160

Agent for Applicants